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IN THE

Supreme Court of the United States

October Term, 1976

No. 76-331

THE NORTH CAROLINA UTILITIES COMMISSION, SOUTHEASTERN ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, et al.,

Petitioners,

vs.

THE FEDERAL COMMUNICATIONS COMMISSION and THE UNITED STATES OF AMERICA, et al.,

Respondents.

On Petition for A Writ of Certiorari To The United States Court of Appeals for the Fourth Circuit

BRIEF OF AMICUS CURIAE STATE OF NEW MEXICO, ex. rel. NEW MEXICO STATE CORPORATION COMMISSION IN SUPPORT OF PETITIONS FOR WRIT OF CERTIORARI

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INTEREST OF AMICUS CURIAE

The State of New Mexico has a population of approximately 1,169,400 people. Seventeen telephone companies operate in the state and provide a wide range of services, including terminal equipment which has historically been regulated by the New Mexico State Corporation Commission.

The Commission is the constitutional body which has the power and the duty of fixing, determining, supervising, regulating and controlling all charges and rates of telephone companies within the state.

The interest of the State of New Mexico in this proceeding is to maintain the jurisdiction over terminal equipment and facilities which it has historically exercised and to protect that jurisdiction from encroachment by improper actions of the Federal Communications Commission.

ARGUMENT

The Federal Communications Commission exceeded its authority under Section 2(b) and 221(b) of the Communications Act of 1934 when it preempted the jurisdiction of the New Mexico State Corporation Commission over terminal equipment which is used predominately in local and intra-state telephone service.

Such action by the FCC will result in an unnecessary deprivation of the power of the people of the State of New Mexico, through their elected Commissioners, to regulate telephone equipment at the local level. The State Corporation Commission remains in a far better position than the FCC to gauge the needs of telephone subscribers in the state. It remains in a far better position to choose rate structures for terminal equipment and facilities to be used within the state.

The New Mexico Commission believes the decision of the United States Court of Appeals for the Fourth Circuit is contrary to the language and intent of the Communications Act of 1934. The decision also violates clear principles of federalism.

CONCLUSION

For these reasons, a writ of certiorari should be issued to review the judgement and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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